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**VIA OVERNIGHT MAIL**AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission  
Docket Control  
1200 West Washington  
Phoenix, AZ 85007-2996

Re: Emergency Application of Teligent Services, Inc.  
to Discontinue Local Exchange Service and for a  
Waiver of R14-2-1107(B)  
Docket No. T-03761A-01-0911

Dear Sir or Madame:

Enclosed for filing is an original and five copies of Teligent Services, Inc.'s  
Exceptions to Staff Report in the above-referenced matter. Kindly date-stamp and return  
the enclosed extra copy in the self-addressed, stamped envelope provided herewith.

If you have any questions or require any additional information, please do not  
hesitate to contact me at 703-326-4650.

Sincerely,

Terri B. Natoli  
Vice President  
Regulatory Affairs and Public Policy

Enclosures

cc: Mark DiNunzio  
Christopher Kempley

Arizona Corporation Commission  
DOCKETED

FEB 08 2002

DOCKETED BY

## BEFORE THE ARIZONA CORPORATION COMMISSION

William A. Mundell  
Chairman  
Jim Irvin  
Commissioner  
Marc Spitzer  
Commissioner

Emergency Application of	)	
Teligent Services, Inc.	)	
to Discontinue Local Exchange Service	)	Docket No. T-03761A-01-0911
and For a Waiver of R14-2-1107(B)	)	

### EXCEPTIONS TO STAFF REPORT

Teligent Services, Inc. (Teligent") hereby respectfully files these exceptions to the Staff Report submitted in the above referenced proceeding.<sup>1</sup> Specifically, Teligent respectfully requests that the Staff reconsider its decision to cancel Teligent's CC&N to provide local exchange service for the reasons discussed below.<sup>2</sup> As the Commission is aware, Teligent has been operating in Chapter 11 since May 21, 2001.<sup>3</sup> While it reorganizes its financial structure in order to emerge in some form as a going concern, Teligent continues to provide services to customers within the State of Arizona and continues to comply with all Arizona Corporation Commission ("Commission") rules and regulations regarding its provision of service.

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<sup>1</sup> See Staff Report for the Emergency Application of Teligent Services, inc. to Discontinue Local Exchange Service and for a Waiver of R14-2-1107(B), Docket No. T-03761A-01-0911, dated January 10, 2002 ("Staff Report").

<sup>2</sup> *Id.* at 2.

<sup>3</sup> See Letter to Secretary, Arizona Corporation Commission, from Terri B. Natoli, Vice President of Regulatory Affairs and Public Policy, dated May 21, 2001 (faxed to Steve Olea, Assistant Director).

Teligent hopes and expects to offer local exchange service in the State of Arizona in the future once it emerges from its current Chapter 11 status, which it expects to occur later this year. It is precisely for this reason that Teligent specifically requested in the above-captioned Emergency Application to Discontinue Basic Local Service ("Application") that it desired to retain its local exchange operating authority. Teligent herein provides additional information concerning its plans to continue operations within the state that it believes will provide additional information that enables the Commission to gain a better understanding of the nature of Teligent's service discontinuance, which, in turn, will lead to reconsideration of this proposed action to cancel Teligent's local CC&N.

On November 15, 2001, Teligent filed its Application to discontinue local exchange service to business customers in the Phoenix market area.<sup>4</sup> Despite its need to file an Application to discontinue local service operations, Teligent stated that it was *not* seeking to cancel its operating authority as it hoped to be in a position to again offer local exchange service to Arizona customers in the future.<sup>5</sup> Specifically, Teligent stated that "[i]n spite of its need to discontinue these services at this time, Teligent *is not* seeking to cancel or modify its CPCN. Indeed, Teligent intends to continue to provide and offer its other facilities-based fixed wireless services, including private line, transport, and wholesale services, in addition to resold services in Arizona."<sup>6</sup> Teligent continues to provide these services while it restructures and reorganizes under Chapter 11 in a manner which will enable it to emerge, with new funding, as a going concern. Indeed, the purpose of Title 11

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<sup>4</sup> See Application of Teligent Services, Inc. for Emergency Authority to Discontinue Local Exchange Service, Docket No. T-03761A-01-0911, filed November 15, 2001. ("Application")

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Id.*

of the US Bankruptcy Code is to enable an entity, such as Teligent, that has experienced financial difficulties, to invoke the protections of Chapter 11 while in reorganization. Teligent had previously filed an Application for approval of a Chapter 11 "Re-emergence Plan" in September 2001, describing in detail its plans with respect to "emerging." While this initial "Re-Emergence Plan" has changed somewhat due to circumstances beyond Teligent's control, Teligent has made it clear to the staff and the Commission that it is still vigorously moving forward to finalize its plans to emerge.<sup>7</sup>

As evidence of this fact, on November 15, 2001, at the same time it filed its Application, Teligent filed updated information regarding its "Re-Emergence Plan," which it had first described in its filing dated September 7, 2001, in Docket No. T-03761A-01-0711.<sup>8</sup> That update stated that Teligent is seeking to preserve as much of its remaining business operations as possible until its reorganization process is completed. It further stated that, "Teligent continues to diligently work with potential investors to enable a Re-emergence Plan, through TAC, to occur." Teligent explained in the update, as it did in its Application, that the local service discontinuance was not a volitional action on the part of the Company to exit a particular line of business for its own convenience. Rather, Teligent clearly explained, as it has in numerous conversations with the staff since mid-November 2001, that this local service affecting situation was precipitated solely by Teligent's only source of funding, its secured creditors, indicating that no further funds would be made

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<sup>7</sup> See Docket No. T-03761A-01-0711 "Re-Emergence Plan" filed September 7, 2001.

<sup>8</sup> See Letter to Arizona Corporation Commission, from Terri B. Natoli, Vice President, Regulatory Affairs & Public Policy, Teligent Services, Inc., Re: Teligent Services, Inc. and TAC License Corp. – Chapter 11 "Re-Emergence Plan," Docket No. T-03761A-01-0711, dated November 14, 2001 ("*TAC Notice*").

available for these operations during Teligent's reorganization period.<sup>9</sup> Because Teligent had no other source of funding at that time, this action was necessary to avoid its creditors pushing Teligent into an immediate Chapter 7 liquidation, which would allow the creditors to avoid expending any additional money which they would not be able to recover.

Teligent has tirelessly worked to avoid a Chapter 7 liquidation as that would have resulted in the immediate shutdown by the Court of all of its service operations in Arizona, including local, long distance and private line, with no notice to its customers. Teligent endeavored in its update to provide the Commission all the information it needed to understand the uniqueness of Teligent's situation and to highlight its desire to preserve its operating authority in order to permit it to immediately reintroduce local exchange service offerings should it be in a position to do so once it emerges from bankruptcy.

Moreover, Teligent explained that it is not seeking to abandon the provision of local service on a permanent basis.<sup>10</sup> Teligent explained that it must cease providing these services for an interim period due solely to its creditors' refusal to continue funding these services while Teligent is reorganizing in Chapter 11. Teligent expressed its need to retain its CC&N to be in a position to resume these services once it emerges from bankruptcy just as numerous other certificated local carriers in Arizona that hold local service authority but have not yet begun to or have decided not to offer a service they are authorized to offer.

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<sup>9</sup> Since entering Chapter 11 in May, Teligent's creditors have been providing funds to keep Teligent operational, making funds available in only two to four week increments pursuant to a Cash Collateral Agreement, the terms of which were approved by the Bankruptcy Court. These funds are made available through Teligent's submission to its creditors of detailed 2-4 week budgets itemizing each dollar it plans to spend and the activity for which it will be used. These budgets are prepared pursuant to the terms of the Cash Collateral agreement which Teligent has with its creditors which has been the sole vehicle from which Teligent has had any funds to continue its operations since May 21, 2001.

<sup>10</sup> Title 14, R14-2-1107 contemplates that competitive local exchange carriers can "discontinue service" without "abandoning" service in its authorized area.

Although it is unclear whether the Commission's action canceling Teligent's local operating authority includes Teligent's authority to offer local private line, transport and wholesale offerings, (Teligent service which fortunately were not affected by the creditors' decision) Teligent believes that Commission action permitting it to retain its local operating authority would eliminate the need to disaggregate its operating authority or make any determinations as to the scope of its operating authority.

As explained above, Teligent remains hopeful that, at the conclusion of its Chapter 11 reorganization process, it will be in a position to commence the rebuilding of these local services networks in a more efficient and cost-effective manner so that customers in these markets can once again receive these high quality, lower cost competitive telecommunications services. Unlike companies that are in Chapter 7 and liquidating their assets, Teligent hopes to emerge from Chapter 11 as a going concern and continues to pursue funding options toward this end. Indeed, as described below, Teligent recently learned that a group of banks and financial institutions have committed to fully fund a going forward "New Teligent" until it is cash flow positive. The details of this commitment are being concluded at this time and a plan is expected to be presented to the Bankruptcy Court in the next few months. As soon as this plan is finalized, Teligent will supplement its "Re-Emergence Plan," Docket No. T-03761A-01-0711.

Teligent notes that it was completely surprised to receive a copy of the Staff's recommendation to cancel its CC&N to provide local exchange service particularly since Teligent had been in fairly constant contact with Staff during its customer transition process and never was it even suggested that such action would be proposed. In addition, Teligent is not aware of any Commission rule or statutory provision that would have enabled its

operating authority to have been rescinded based upon its Chapter 11 status or the “inconvenience” alleged by the staff that the discontinuance caused some customers. Teligent certainly understands the Commission’s concerns regarding the financial status of carriers that hold operating authority within the state, and whether that status affects a carrier’s ability to fulfill its obligations as a CC&N holder. However, Teligent cannot find a single rule that it has violated or failed to comply with as a result of its Chapter 11 status or as a result of its service discontinuance. In fact, in the absence of any express rules or directives from the Commission with respect to how a service discontinuance in the event of bankruptcy should be handled, Teligent went to great lengths, which it believes were quite successful, to ensure that its customers were not inconvenienced. Teligent acknowledges that the Commission’s primary interest must be the public and protecting the public to the maximum extent possible. Teligent similarly has been concerned about the welfare of those Arizona local exchange customers (and its other local customers across the country) that were impacted by its creditor’s decision to no longer fund Teligent’s local service operations. For that reason, Teligent endeavored to keep its customers continually informed of its Chapter 11 status and progress, since May 2001, when it entered Chapter 11, and to ensure them that, if their service was impacted, they would be guaranteed at least 30 days’ notice to transition to another provider and that Teligent would assist them in this effort.

As a result, any Teligent local customers that remained with Teligent throughout the past several months did so with the full knowledge that they would have only 30 days’ notice should their service be impacted. Once Teligent notified its customers that their service would be affected, it went to great lengths to assist them in their seamless transition

to an alternative carrier. Among other things, Teligent provided customers its toll-free customer service number and urged them to contact customer service if they required any assistance with transitioning to an alternative carrier by the date service could be impacted. Customer service forwarded all customer inquiries to a special escalation individual in Teligent's legal department, Ms. Ruth Holder, who immediately initiated a coordinated effort between Teligent's operations personnel, the new alternative carrier, the ILEC (if the alternative carrier is UNE-based or a reseller), and the customer to solve any issues within the requisite time frame. Teligent worked tirelessly with the ILECS and other CLECs to identify single points of contact within each carrier to manage the customer's transition to those carriers. For example, Teligent contacted Qwest's senior wholesale management team to discuss the transition effort and arranged a porting process and a project manager to mutually coordinate customers' transitions to Qwest upon their choice.

In addition, Teligent provided customer referral lists of all its affected customers when requested by other carriers. Even if the gaining carrier was unable to provide the identical services provisioned to the customer by the discontinuance date, Teligent was very successful in designing creative solutions to ensure that some form of service was maintained on an interim basis. For instance, Teligent helped alternative carriers fashion call forwarding solutions that enabled the customers to receive calls on their Teligent assigned numbers prior to having lines provisioned for their services. Teligent also offered to make available its underlying fixed-wireless facilities at existing customer locations to other carriers where possible to enable that carrier to reach the customer through Teligent's antennas. Teligent established a special porting process that enabled it to port a customer's number to another carrier on a "hot-cut" coordinated basis upon one hour's notice. Teligent



assures the Commission that it did *everything* possible to ensure that no affected Arizona customer was left without dial tone on the date Teligent service was no longer available.

With the exception of a few customer transition matters that were brought to the Commission's attention for which the complainant faulted Teligent *even though* the issue arose not because of Teligent but solely because the customer's new chosen CLEC and the CLECs underlying facilities-based carrier had provisioning issues between one other, Teligent is aware of no complaint from Arizona customers associated with its local service discontinuance that have been raised with the Commission or with Teligent directly.<sup>11</sup>

Unlike other carriers that have faced Chapter 11 or even Chapter 7, Teligent has not, nor would it ever leave its customers unassisted without dial tone as long as it had any means to prevent this. Teligent believes it acted reasonably and responsibly under the extenuating circumstances. Teligent complied (and continues) to comply with any and all requirements applicable to it as an authorized operating entity in the State of Arizona. Since it obtained its initial authority in October 1998, Teligent has always felt it has had a good relationship with Staff and the Commission. Teligent has never been cited for failing to abide by its requirements and has received few, if any, complaints from customers regarding its service over the past three or more years. Teligent continues today to serve customers in the state with long distance and other fixed wireless services and intends to grow its customer base as it works through its Chapter 11 reorganization process and thereafter in its "emerged" form.

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<sup>11</sup> As a result, Teligent was somewhat puzzled when Staff recently indicated to it that Teligent "caused a big mess" in Arizona for the Commissioners, its staff, and Arizona customers.

If the Commission is concerned about Teligent's financial ability to offer local service in the future once it emerges from Chapter 11, a legitimate concern under the circumstances, Teligent assures the Commission as it did in its initial "Re-Emergence Plan" filing that the Bankruptcy Court *will not approve* a plan to go forward out of Chapter 11 unless sufficient funding is available. Certainly, the fact that Teligent currently has no immediate financial resources of its own and is dependent on its creditors to enable it to continue operating pending its reorganization and "emergence" from Chapter 11, calls into question Teligent's immediate financial qualifications.<sup>12</sup> However, Teligent's unfortunate current financial situation is precisely what Chapter 11 of the Bankruptcy Code was enacted to address in a manner that does not penalize Teligent for this situation.

The purpose of Chapter 11 (as distinguished from a Chapter 7 liquidation) is to enable entities whose financial situations have declined to such an extent that they are unable to continue meeting their financial obligations, to be able to reorganize under the Bankruptcy Court's supervision with the protections Chapter 11 affords. The most significant protections of Chapter 11 are the automatic stay that is imposed on third parties which prevents those parties, including governmental agencies, from taking any action against the debtor-in-possession which could have the affect of devaluing the asset base or otherwise adversely affecting the ability of the debtor, in this case Teligent, to reorganize, emerge and continue its on-going and planned operations upon emerging because of its Chapter 11 status and the protection against discriminatory treatment by a governmental

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<sup>12</sup> Unfortunately, if this were the standard applied to all competitive CC&N holders in Arizona, the overwhelming majority would likely be deemed to be financially unqualified at this particular time due to the numerous current or threatened Chapter 11 filings.

unit with respect to a governmental grant of authority, license, permit, etc... because of the Chapter 11 status.

While the interplay between the protections of Chapter 11 and the ability of a governmental agency to revoke an operating authority of an entity in Chapter 11 solely because its financial situation has resulted in a service-affecting situation (which does not otherwise result in any egregious, intentional or negligent disregard or violation of any Arizona law or rule) is not the specific issue being addressed herein, Teligent believes that this would become an important and determining issue should the Commission proceed to cancel Teligent's CC&N solely because of its Chapter 11 financial status and before Teligent has had an opportunity to obtain Bankruptcy Court approval for a reorganization plan as a going-concern. Moreover, the fact that Teligent's CC&N clearly is an asset of substantial value to the debtor's estate, both directly as well as with respect to other of the debtor's assets (in this case the FCC spectrum licenses for Arizona markets which Teligent uses to provide its revenue-producing services pursuant to its CC&N, including the local exchange service it has provided and expects to provide at some future time upon emerging from Chapter 11) will also bear on whether revocation of Teligent's CC&N in a Chapter 11 context is prevented by the bankruptcy statute.

In the Staff Report, Staff stated that it "believes that Teligent is no longer a fit and proper entity to hold a CC&N to provide local exchange service."<sup>13</sup> Staff's justification is based on two stated factors: (1) that "Teligent's financial health is poor enough to foreclose any opportunity to acquire external financing and has forced the company into bankruptcy" and (2) that "the discontinuation of local exchange service has caused some customers the

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<sup>13</sup> Staff Report at 2.

stress and inconvenience of finding another provider in a relatively short time frame.” The “financial health” basis expressly contravenes the letter and spirit of Chapter 11 of the bankruptcy code. Furthermore, as Teligent has indicated to staff a number of times, it is vigorously pursuing external financing sources and indeed has recently secured commitments that will enable it to move its assets out of bankruptcy. Moreover, the only way Teligent will be in a position to provide local service in Arizona in the future is: (1) if it actually receives the funding to emerge from Chapter 11 (which means it will again have financial resources of its own and will no longer be operating at its secured creditors will) and; (2) most significantly, if the bankruptcy court approves the reorganization plan as a going concern.

Thus, while Teligent understands the Commission’s concern that it might be able to reintroduce local service in the future without the requisite financial resources to do so, this concern should be alleviated through the fact that the Court will not permit a Teligent reorganization plan to move forward as a going concern through issuing an approval Order unless Teligent demonstrates it has sufficient funding to do so. Teligent will continue to fully inform the Commission, in writing, of the progress of its emergence plan as Commission approval of that plan is still pending in Docket No.T-03761A-01-0711. Based on the above, Teligent believes that the Staff’s determination of “no longer fit and proper” based on Teligent’s current financial health should be reconsidered. As for Staff’s second stated reason for deeming Teligent “no longer fit and proper,” *i.e.*, “some customers stress and inconvenience,” Teligent similarly believes that the detailed information it has provided above about its customer notification process, its transition efforts and Staff’s own findings that:

“Teligent, Qwest and Staff have cooperated in finding the customers local service before Teligent discontinued their service. To Staff’s knowledge, no former Teligent local service customers were without service between providers. Staff believes that Teligent has fully complied with the Commission’s Decision No. 64250”

warrant reconsideration of the “no longer fit and proper” determination based on “customer inconvenience.”

Finally, although not specifically stated or otherwise indicated in the Staff Report, nor in any statute or rule that Teligent has been able to find after an in depth review, it is Teligent’s understanding based on discussions with Staff after its Staff Report was issued, that the Commission has adopted an informal policy regarding the cancellation of a CC&N where the subject services are not provided or if a carrier that once provided them subsequently discontinues providing them. Staff explained that, recently, the Commission has adopted a policy of canceling a CC&N if the party holding the CC&N does not provide the subject services within one year of obtaining the CC&N and some CC&Ns which have recently been granted are even conditioned upon providing service within one year. Teligent obtained its CC&N to provide local exchange service in 1998. At the time its CC&N was granted, it was not conditioned upon the provision of local exchange service within a specified period of time nor was Teligent provided any notice since that time that discontinuing a service either voluntarily or involuntarily as in Teligent’s current case could result in the rescission of Teligent’s local exchange CC&N. It is unclear whether retroactive application of the informal policy is appropriate under these circumstances particularly where here, the CC&N holder in fact did provide the authorized services and

where the discontinuance results from circumstances beyond Teligent's control. Moreover, if after consideration of all of the above, the Commission feels compelled to retroactively apply this informal policy, Teligent should, at a minimum, be given at least one year after emergence from Chapter 11 to reintroduce local exchange service in the State of Arizona. Indeed, Teligent believes that failure by the Commission to permit it at least one year within which to reintroduce local exchange service would be not only unfairly punitive, but discriminatory as other carriers were given a one year window of time within which to initiate the provision of service, and were purportedly given notice of this condition to their CC&N.

In conclusion, Teligent respectfully continues to seek to preserve its local operating authority and local exchange tariff as it expects to emerge from bankruptcy in the near future and hopes to reintroduce local exchange services that are the same as those covered by its current local exchange operating authority and local exchange tariff. Unlike other carriers that are discontinuing service without any prospect of returning to the marketplace, Teligent is in the process of completing a transaction that would allow it to do just that. For this reason, Teligent urges the Staff to reconsider its recommendation to cancel Teligent's CC&N to provide local exchange service. Should staff fail to reconsider this matter and proceed with this recommendation, which in turn results in a recommended decision to

cancel Teligent's certificate, Teligent requests that a hearing be conducted at which it is afforded an opportunity to present its case to the Commissioners.

Respectfully submitted,

**TELIGENT SERVICES, INC.**

By: 

Terri B. Natoli  
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It's Attorneys

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Date: February 7, 2002